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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,555	12/05/2003	Delton R. Thompson JR.	56109US011	9972

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3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

EXAMINER

BUTLER, PATRICK NEAL

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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12/18/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/728,555

Applicant(s)

THOMPSON ET AL.

Examiner

Patrick Butler

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the enclosed response.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 16 November 2006 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 102(b) rejection. Applicant's arguments appear to be on the grounds that:

1) The "temperature-range" taught by Buntin does not teach a particular temperature or temperature range for a particular polymer. The "polymer-list" taught by Buntin does not teach particular temperatures for the polymers.

2) Since persons skilled in the art would have understood that different polymers have different degradation temperatures, the persons would understand that particular polymers are treated at a limited range within Buntin's broad range.

3) Other polymers are exemplified by Buntin, yet PET is not part of an example. The examples, when analyzed for their processing temperature relative to their melt temperature, limit Buntin's statement of "well above the melting point" to at least 86 °C above the melt temperature of a polymer. For PET, this would be well above the claimed range of less than 295 °C because PET's melt temperature is 250-260 °C.

4) Buntin's requirement of treatment "for a period of time effective to cause the requisite extent of resin degradation" is counter to Applicant's purpose of preparing meltblown PET fibers with a more fully developed molecular structure.

5) Because Buntin does not show examples of PET and is mainly about PP and other polyolefins, Buntin is therefore not enabling with respect to PET.

Applicant argues with respect to the 35 USC 103 rejections. Applicant's arguments appear to be on the grounds that

6) The 35 USC 103 rejections fail via their dependency on the 102(b) reference, Buntin.

7) The rejection over Applicant's Admission is incorrect in that it presumes that "Buntin teaches the same process as applicant."

The Applicant's arguments are addressed as follows:

1 and 2) Buntin's temperatures are specifically applicable to the polymers in Buntin. The Examiner interprets the temperatures and polymers to be associated and applicable principally because they are taught for the same process.

1) Moreover, analogous to Applicant's argument, the Examiner recognizes that Buntin does not prohibit particular temperatures for any of the particular polymers listed nor prohibit particular polymers from portions of the temperature range.

2) As shown in Applicant's attached reference filed 16 November 2006, *Encyclopedia of Polymer Chemistry*, volume 4, pages 652-3 (Attachment M), Tables 10 and 11, PET degrades above 105 °C. Buntin teaches heating the polymer to a temperature in excess of about 550 °F (288 °C) (see col. 7, lines 23-26 and 59-64). Applicant's claimed temperature is less than about 295 °C. PET at about 550 °F (288 °C) would be:

- within Buntin's temperature range (in excess of about 550 °F (288 °C) (see col. 7, lines 23-26 and 59-64)),
- within Buntin's teaching of degradation (see col. 3, lines 37-47), and

- within applicant's claimed range (less than about 295 °C).

Thus, Buntin's teaching of degradation of PET would overlap with all of the range of Buntin's temperature range. Since these temperatures taught by Buntin's overlap the same process conditions as Applicant's claimed process, the processes would necessarily have the same results.

2) Moreover, for the 35 USC 102 rejection, it is not a question of whether one of ordinary skill at the time the invention was made would have modified Buntin's temperature range. This is because Buntin is relied upon to teach the temperature range independent of additional motivations to change away from Buntin's teachings.

3) The examples of Buntin do not include PET, however Buntin's Claim 1 does include it as a thermoplastic polymer resin. Analogously, it may be seen that the examples and their ranges are not considered limitations as to the polymer nor the temperature. Therefore, Buntin is relied upon for all that the reference teaches, specifically the polymers and ranges that the reference teaches.

4 and 7) Any difference in Applicant's and Buntin's reason for practicing the method is moot since the method steps are the same. Specifically, it is not clear that Applicant's Claim 1 language "impart chain-extended crystallization to the PET fibers" is an independent step. Rather, the Examiner interprets it to be a stated result of the process. As Buntin teaches the same method steps as the Claims, Buntin's process would necessarily have the same result.

4 and 7) The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the

references teach all of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

4) Regarding the implication that Buntin's statement "to cause the requisite extent of resin degradation" would cause Buntin's process throughout Buntin's entire temperature-range to not "impart chain-extended crystallization to the PET fibers," the arguments are not persuasive because arguments of counsel cannot take the place of evidence in the record.

5) PP is not the limitation of the claimed invention of Buntin in Claim 1, which teaches using thermoplastic polymer. As previously described, the thermoplastic polymers mentioned in the specification are not limited to PP and explicitly include PET. Thus, the process parameters of the Buntin's invention are to select one of the polymer resins listed at col. 4, lines 31-49. Thus, the reference is given the presumption of validity by the Examiner.

6) Buntin's teachings are relied upon as previously described in response to 1)-5).


Conclusion

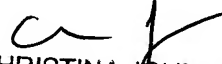
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mo.-Th. 7:30 a.m. - 5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Patrick Butler
Assistant Examiner
Art Unit 1732


CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
12/14/06